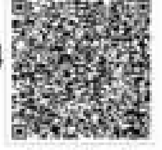


IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-7559-2021
Date of Decision: 09.09.2025

STATE OF HARYANA

... Petitioner

Versus

HARVINDER PAL @ PINKI & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vipul Sherwal, AAG, Haryana
for the petitioner.

Mr. Saksham Dudeja, Advocate (Legal Aid Counsel)
for respondent No.1.

Ms. Deepika, Advocate for
Mr. Sandeep Goyal, Advocate
for respondent No.2.

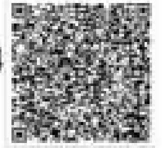
Mr. H.S. Randhawa, Advocate (Amicus Curiae).

****

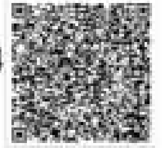
JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the impugned order dated 20.01.2020 passed by the Addl. Sessions Judge, Yamuna Nagar at Jagadhri in case FIR No.11 dated 10.12.2014 registered under Sections 7, 8 & 13 of the P.C. Act at Police Station State Vigilance Bureau, Panchkula whereby directions have been given to the Investigating Officer through the Public Prosecutor to "apply for formal sanction" against S.I. Naresh Kumar.

2. The present case under sections 7,8 and 13 of Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'), was registered on



the allegations made by complainant/respondent No.2-Jaspal Singh alleging that he was picked up from his shop by SI Naresh Kumar on 28.10.2014 and brought to Special Staff, Jagadhri where he was confined till 29.10.2014, though, no case was registered against him. He was attributed allegations of dealing with stolen vehicles. On 29.10.2014 SI Naresh Kumar inquired if the complainant/respondent No.2 knew Pinki Bindra of Ambala. On replying in the affirmative, SI Naresh Kumar made him speak with Pinki @ Harvinder Pal who came to Special Staff, Jagadhri. Harvinder Pal alias Pinki Bindra after talking to SI Naresh Kumar asked the complainant/respondent No.2 to pay Rs.10,00,000/- for being released. After negotiation, the amount was settled at Rs.4,00,000/- and the complainant/respondent No.2 was set free on the assurance of accused Harvinder Pal alias Pinki Bindra. Thereafter, accused Harvinder Pal started pressurizing the complainant/respondent No.2 for payment to be made to SI Naresh Kumar. Therefore, on 10.12.2014 on the written complaint made by the complainant/respondent No.2 to the State Vigilance Bureau, a trap was laid wherein accused Harvinder Pal alias Pinki Bindra was caught red handed while accepting Rs.1,00,000/- towards part payment of said amount from the complainant/respondent No.2. The statement of complainant/respondent No.2 was got recorded under Section 164 Cr.P.C. wherein he reiterated the said allegations. During investigation of the case, the disclosure statement of accused Harvinder Pal alias Pinki Bindra was also recorded and after completion of the investigation in the case, initially the charge sheet under sections 7,8 and 13 of Act was filed against

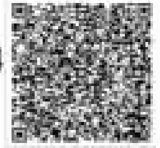


accused Harvinder Pal alias Pinki Bindra with SI Naresh Kumar being retained in column no.2.

3. Subsequently, a formal cancellation report under Section 173(8) Cr.P.C. giving a clean cheat to SI Naresh Kumar was filed. Notice of the aforesaid cancellation report was given to the complainant/respondent No.2 who initially filed a protest petition on 12.07.2017 and while the same was under consideration, the complainant/respondent No.2 also filed an application under Section 193 Cr.P.C. for taking cognizance against SI Naresh Kumar.

4. On the basis of the findings arrived at in the report under Section 173(8) Cr.P.C. exonerating S.I. Naresh Kumar and the application under Section 193 Cr.P.C. filed by the *de facto* complainant/respondent No.2-Jaspal Singh, the Court of Addl. Sessions Judge, Yamuna Nagar at Jagadhri took cognizance against the accused vide order dated 20.01.2020. The operative part of the order is reproduced as under:-

> *"19. The aforesaid circumstances on record prove that there is sufficient material available on the file for taking cognizance against SI Naresh Kumar. In view of the aforesaid circumstances, the cancellation report/report under Section 173(8) Cr.P.C. filed by the police and forwarded by the prosecution exonerating SI Naresh Kumar stands rejected and application under Section 193 Cr.P.C. filed by the complainant/Jaspal Singh stands disposed of.*
>
> *20. However, as per section 19 of the Prevention of Corruption Act, the Court is precluded from taking cognizance against an accused who is a public servant, without a valid sanction of the*

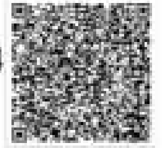


> *competent authority. <u>Accordingly, the investigating officer, DSP Suresh Kumar, through the Public Prosecutor is directed to apply for formal sanction against SI Naresh Kumar for commission of offence punishable under sections 7, 8 and 13 of the Prevention of Corruption Act, 1988 within a week from today under intimation to this Court</u>. The learned Public Prosecutor is directed to inform investigating officer, DSP Suresh Kumar."*

5. The aforementioned order has been challenged by the State not on the merits of the case but only on the grounds that directions to the Public Prosecutor to 'apply for formal sanction' against S.I. Naresh Kumar could not have been issued by the Court.

6. The learned counsel for the State contends that the directions issued in para 20 of the impugned order could not have been issued by the concerned Court as it lay in the exclusive domain of the appropriate sanctioning authority itself to either grant sanction or reject the same. Therefore, the impugned order dated 20.01.2020 is liable to be set aside. Reliance is placed on the judgments in ***<u>Deepak Sandhu Versus Punjab & Haryana High Court Chandigarh through its Registrar General and others, CWP-32881-2024, decided on 04.02.2025</u>*** and ***<u>Dr. Jaswant Singh Versus State of Punjab & another, 2006(4) R.C.R. (Criminal) 525</u>***.

7. The learned counsel for the respondent No.1, respondent No.2/complainant Jaspal Singh and the Amicus Curiae, on the other hand, further contend that the directions issued in para 20 are not to the effect that formal sanction 'must be granted' by the appropriate authority but the



directions are only to the effect that DSP Suresh Kumar through the Public Prosecutor is directed to 'apply for grant of sanction'. It is a limited mandamus to the authorities to apply for sanction and there is no mandamus directing the appropriate authority to "grant sanction". This distinction is crucial and therefore, the impugned order cannot be faulted. Reliance is placed on the judgments in ***The State of Punjab Versus Partap Singh, 2024 AIR Supreme Court 3299*** and ***Arun Aggarwal Versus State of Madhya Pradesh & others, 2011 AIR Supreme Court 3056.***

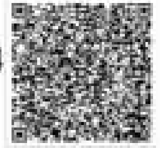
8. I have heard the learned counsel for the parties.

9. Before proceeding further, it would be apposite to refer to the judgments relied upon by the State and the same are discussed hereinbelow:-

In ***Deepak Sandhu*** (supra), this Court held as under:-

> *"4. What follows from the aforesaid law laid down by Apex Court is that as regards the issue of grant or refuse to grant sanction for prosecution, the domain of discretion available to the competent authority cannot be foreclosed by issuing writ of mandamus or direction by a superior court, especially in the limited discretionary and plenary jurisdiction under Article 226 of the Constitution of India, which has its own restrictions and self imposed inhibitions. The discretionary power of the competent authority to decide for or against grant of sanction for prosecution cannot be usurped or taken away while exercising power of judicial review."*
>
> (Emphasis supplied)

In ***Dr. Jaswant Singh*** (supra), this Court held that the Court could not take cognizance for want of sanction even if it formed a view that

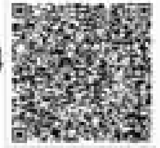


there was evidence against the accused.

10. The judgments relied upon by the respondents and the Amicus Curiae are discussed hereinbelow:-

In ***The State of Punjab (supra)***, the Hon'ble Supreme Court held as under:-

> *"2. Brief facts of the case are that on 25.04.2016, an FIR u/s 7/13 (2) of the P.C Act was lodged against Respondent- Dr. Partap Singh Verka and another co-accused i.e. 'Vikas', at Police Station Vigilance Bureau, Amritsar. It was disclosed in the FIR that the present respondent was working as a doctor in Guru Nanak Hospital at the relevant point of time when complainant-Gurwinder Singh sought treatment for his brother who was in jail. The complainant alleged that on 20.04.2016 the Respondent took a bribe of Rs.10,000 from the complainant through the accused-Vikas for admitting the complainant's brother in his hospital, as he was otherwise reluctant to treat a prisoner. Again on 24.04.2016, the respondent demanded another Rs.10,000/- to keep the patient in the hospital for further treatment and asked the complainant to give that amount to the other accused i.e. 'Vikas' in two installments of Rs.5,000 each. The complainant, however, contacted the Vigilance Bureau instead and the officials of Vigilance laid a trap to catch the culprits. On 25.04.2016, the accused-Vikas (ward attendant) was caught red-handed in the parking lot of the hospital receiving Rs.5000 from the complainant. On the same day, the respondent was also arrested from his office.*
>
> *3. In May 2016, both the accused were released on bail. A charge-sheet dated 22.12.2016 was later filed only against the other accused-Vikas. The present respondent was not named in the charge-sheet as an accused*
>
> *4. However, during the course of the trial, the complainant-Gurwinder Singh deposed as PW-1 on 12.05.2017 and in his*



examination-in-chief, he said that it was the present Respondent who had demanded the bribe and it was on his behalf that the other accused, Vikas had received the bribe amount. The trial Court deferred the hearing on the request of the Public Prosecutor of the State who then wanted to move an application under Section 319 of the CrPC for summoning the respondent as an accused. Consequently, an application was moved by the State on 18.05.2017 under Section 319 CrPC, which was allowed on 20.05.2017 and Dr. Partap Singh Verka was summoned to face the trial.

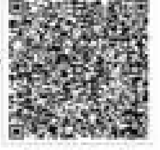
5. The accused Respondent challenged this order of the Trial Court before the High Court which has set aside the order of the Trial Court, as sanction under Section 19 of the P.C Act had not been taken.

***** ***** *****

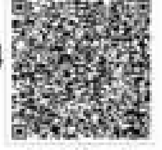
11. It is a well settled position of law that courts cannot take cognizance against any public servant for offences committed under Sections 7, 11, 13 & 15 of the P.C. Act, even on an application under section 319 of the CrPC, without first following the requirements of Section 19 of the P.C Act. <u>Here, the correct procedure should have been for the prosecution to obtain sanction under Section 19 of the P.C Act from the appropriate Government, before formally moving an application before the Court under Section 319 of CrPC. In fact, the Trial Court too should have insisted on the prior sanction, which it did not. In absence of the sanction the entire procedure remains flawed</u>. We are completely in agreement by the decision of the High Court and therefore are not inclined to interfere with the impugned order passed by the High Court and accordingly this appeal is hereby dismissed.

(Emphasis supplied)

In ***<u>Arun Aggarwal</u>*** (supra), the Hon'ble Supreme Court held as under:-



"*3. The brief factual matrix relating to this appeal is as follows: The respondent No. 2, Shri. Raghav Chandra, who is a Commissioner of M.P. Housing Board, Bhopal along with respondent No. 3, Shri. Shahjad Khan, posted as the then Collector, Katni, Jabalpur and respondent No. 4, Shri. Ram Meshram, posted as the Land Acquisition Officer, M.P. Housing Board, Bhopal, whilst, discharging their functions, had allegedly entered into conspiracy and made a secret plot with Shri. B.D. Gautam, the Director of Olphert Company and, subsequently, purchased the land belonging to Olphert Company at higher rates for the M.P. Housing Board, thereby, caused a financial loss of over Rs. 4 Crores to the Government. The appellant reported this alleged transaction of purchase of land by the M.P. Housing Board, alleging financial loss to the Government, to the Lokayukta, Bhopal. Subsequently, the Special Police Establishment (Lokayukta), Jabalpur (hereinafter referred to as "the Lokayukta Police") registered an FIR No. 165 of 2002 against accused respondent Nos. 2 to 4, as the alleged act or conduct of the accused respondents, all working as Government Servants, amounts to an offence under Section 13 (1-d) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the PCA") and Section 120B of the Indian Penal Code (hereinafter referred to as "the Indian Penal Code"). Accordingly a Criminal Case No. 165 of 2002 was registered against respondent Nos. 2 to 4 in the Court of learned Special Judge. However, the sanction of the Government was necessary as mandated by Section 19 of the PCA in order to prosecute the said accused respondents. Acting upon the complaint of the appellant, the Lokayukta Police, after conducting the investigation, had exonerated respondent Nos. 2 to 4 of all the charges leveled against them and submitted final closure report, under Section 169 of the Criminal Procedure Code (hereinafter referred to as "the Criminal Procedure Code"), to the learned Special Judge, Katni as no case had been made out to prosecute respondents. Thereafter, the learned Special Judge, Katni after*

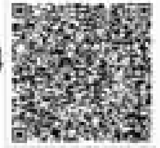


hearing the respondents, appreciating the evidence on record and perusing the case diary, had rejected the closure report vide his Order dated 26.4.2005. The operative portion of the order dated 26.4.2005 passed by the learned Special Judge is extracted below :

"31. In this way from above record produced, even prima facie, it is evident that the accused had made secrete plot (durabhi sandhi) with Shri B.D. Gautam the Director of Olphert Company with conspiracy and purchased land of Olphert Company on higher rate and caused financial loss over four crores to the Government which there are sufficient grounds for taking cognizance against the accused persons.

32. Accused person Shri Raghav Chandra is posted as Commissioner of M.P. Housing Board and Shri Ram Meshram is posted as Land Acquiring Officer in M.P. Housing Board and Shri Shahjaad Khan while remaining posted as Collector, all above accused persons working as Government servant, while discharging their Government duties, committed above crime under section 19 of Anti Corruption Act 1988, it is necessary to obtain sanction to prosecute Government Servant under section 13 of Anti-Corruption Act. Therefore matter may be taken up seeking necessary sanction to prosecute the accused persons Raghav Chandra, Shri Ram Meshram and Shahjaad Khan to prosecute them under Section 13 (1-d), 13 (2) Anti Corruption Act and under Section 120B Indian Penal Code and for necessary further action, case be registered in the criminal case diary."

4. Aggrieved by the above observation, respondent Nos. 2 to 4 preferred Criminal Revision Petitions under Section 482 of the Criminal Procedure Code before the High Court. The High Court allowed the revision petitions and quashed the Order dated 26.4.2005 of the learned Special Judge on the ground that the Order of the learned Special Judge is illegal and without jurisdiction, in view of the decision of this Court in Abhinandan Jha v. Dinesh Mishra, AIR 1968 Supreme Court 117, as the Magistrate cannot impinge upon the



jurisdiction of the police by directing them to change their opinion when the closure report had been submitted by the police under Section 169 of the Criminal Procedure Code The reliance is also placed on the observation made by this Court in the case of Mansukh Lal Vithaldas Chauhan v. State of Gujarat, 1997(4) RCR (Criminal) 236 wherein it is observed that :

"19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority of the facts of the case as also the material and evidence collected during investigation it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. It is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

**** **** ****

6. The issue involved in the present appeal for our consideration is: Whether the High Court is justified in treating the operative portion of the Order of the learned Special Judge as a direction issued to the sanctioning authority to sanction the prosecution of the accused respondent Nos. 2 to 4.

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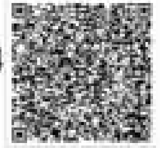
10. We have heard the learned counsel for the parties before us. The short point in issue before us is based on the nature of the Order passed by the learned Special Judge whether it amounts to a direction



issued by the Court to the concerned authority or mere observation of the Court. 11. We will first discuss the nature and scope of the expression 'direction' issued by the Court. This Court in Rameshwar Bhartia v. The State of Assam, 1953 SCR 126 whilst distinguishing the expression 'Sanction' from the 'Direction', for the purpose of initiating the prosecution has held :

> *"15. But where a prosecution is directed, it means that the authority who gives the direction is satisfied in his own mind that the case must be initiated. Sanction is in the nature of a permission, while a direction is in the nature of a command."*

(Emphasis supplied).

20. To sum up, the direction issued by the Court is in the nature of a command or authoritative instruction which contemplates the performance of certain duty or act by a person upon whom it has been issued. The direction should be specific, simple, clear and just and proper depending upon the facts and circumstances of the case but it should not be vague or sweeping.

**** **** ****

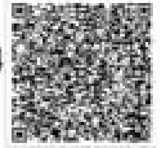
31. In view of above, it is well settled that obiter dictum is a mere observation or remark made by the court by way of aside while deciding the actual issue before it. The mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of the judgment of the Court and have no authoritative value. The expression of the personal view or opinion of the Judge is just a casual remark made whilst deviating from answering the actual issues pending before the Court. These casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of the judgment.

32. In the facts and circumstances of the present case, we are of the opinion that the refusal of the learned Special Judge, vide its Order dated 26.4.2005, to accept the final closure report submitted by Lokayukta Police is the only ratio decidendi of the Order. The other part of the Order which deals with the initiation of Challan

proceedings cannot be treated as the direction issued by the learned Special Judge. The relevant portion of the Order of the learned Special Judge dealing with Challan Proceeding reads as "Therefore matter may be taken up seeking necessary sanction to prosecute the accused persons Raghav Chandra, Shri Ram Meshram and Shahjaad Khan to prosecute them under Section 13 (1-d), 13 (2) Anti Corruption Act and under Section 120B Indian Penal Code and for necessary further action, case be registered in the criminal case diary." The wordings of this Order clearly suggest that it is not in the nature of the command or authoritative instruction. This Order is also not specific or clear in order to direct or address any authority or body to perform any act or duty. Therefore, by no stretch of imagination, this Order can be considered or treated as the direction issued by the learned Special Judge. The wholistic reading of this Order leads to only one conclusion, that is, it is in the nature of 'Obiter Dictum' or mere passing remark made by the learned Special Judge, which only amounts to expression of his personal view. Therefore, this portion of the Order dealing with Challan proceeding, is neither relevant, pertinent nor essential, while deciding the actual issues which were before the learned Special Judge and hence, cannot be treated as the part of the Judgment of the learned Special Judge.

33. In the light of the above discussion, we are of the opinion that, the portion of the Order of the learned Special Judge which deals with the Challan proceedings is a mere observation or remark made by way of aside. In view of this, the High Court had grossly erred in considering and treating this mere observation of the learned Special Judge as the direction of the Court. Therefore, there was no occasion for the High Court to interfere with the Order of the learned Special Judge.

34. In the result, the appeals are allowed. The impugned Order and Judgment of the High Court in Criminal Revision No. 821 of 2005, Criminal Revision Petition No. 966 of 2005 and Criminal Case No. 3403 of 2005 dated 22.4.2009 is set aside. We restore the Order of the learned Special Judge dated 26.4.2005.



35. We direct the respondents to comply with the order passed by the Trial Court within two months from this date."

(Emphasis supplied)

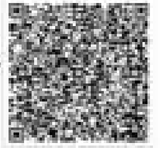
11. A perusal of the judgment in ***Deepak Sandhu*** (supra) would reveal that the Division Bench of this Court held that a mandamus could not be issued to the sanction authority to grant sanction.

As regards the judgment in ***Dr. Jaswant Singh*** (supra) all this Court held was that the Court could not take cognizance for want of sanction even if it formed view there was an evidence against the accused.

12. On the other hand, the judgments in the case of ***State of Punjab*** (supra) and ***Arun Aggarwal*** (supra), it has categorically been held that where the Court intends to take cognizance of an offence then it can direct the appropriate authority to 'apply for sanction'. However, quite rightly, no directions can be issued to the appropriate authority to 'grant sanction'.

13. Coming back to the case in hand, a perusal of para 20 of impugned order would reveal that the Court of Addl. Sessions Judge only directed the Investigating Officer through the Public Prosecutor to "apply for formal sanction" against SI Naresh Kumar for commission of the offence punishable under the various provisions of the Prevention of Corruption Act. No such directions have been issued to the appropriate authority to 'grant sanction' and there lies the crucial difference. Therefore, no fault can be found with the impugned order.

14. In view of the above discussion, I find no merit in the present



petition. Therefore, the same stands dismissed.

15. As many as 5 ½ years have elapsed since the passing of the impugned order. Therefore, the directions issued in para 20 of the impugned order be complied with within a period of 2 weeks from the date of a receipt of the certified copy of this judgment.

(JASJIT SINGH BEDI)
JUDGE

09.09.2025
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No